

RICHARD L. BIBY
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RECEIVED

MAR - 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 4, 1993

Ms. Donna Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-244
RM-8027 - RM-8182

Dear Ms. Searcy:

I and my firm, "Richard L. Biby, Communications Engineering Services, P.C." (hereinafter "CES"), represent Paradise Broadcasting Corporation ("Paradise") as engineer/technical consultant in the above-referenced proceeding. In the past -- but not in this proceeding -- we have provided services to Calypso Communications ("Calypso"), which is also a party in this proceeding.

This letter is being written and placed on the public record to refute clear misstatements that have been made about CES and me by Calypso in this proceeding.

First, in its Petition for Rule Making filed June 22, 1992, Calypso incorrectly implied that CES had been retained to provide engineering that would support a petition to substitute Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands. Calypso stated:

"Calypso's engineer has compiled a channel study, Exhibit E-1, that is attached hereto and has found that channel 267B would be an acceptable replacement for Channel 246B."

The referenced exhibit (a copy of which is appended as Attachment A to this letter) was clearly not a channel study but simply a tabulation from the FCC FM Engineering Database that CES had supplied to Calypso in early June 1992. At no time did Calypso retain CES to prepare a report or an engineering statement for use in this rulemaking, nor did Calypso even inform CES that Calypso intended to use the database tabulation in a petition for rulemaking. CES did not learn about Calypso's petition until November, 1992, several months after it was filed.

074

Upon learning of the foregoing statement in Calypso's petition, I wrote a letter on December 3, 1992, to Calypso's owners, Arthur V. Belendiuk, Jonathan Cohen, and Robert E. Miller, explicitly stating that CES did not and could not represent Calypso in the rulemaking. My letter (Attachment B hereto) stated:

"Please be advised that we have determined that we could not consider representing you in this matter because of a conflict of interest. By this letter, we respectfully call your attention to the fact that we have not represented, do not represent, and can not represent Calypso Communications in this rulemaking proceeding (RM-8027)."

The letter was addressed to the recipients at the law office of Mr. Belendiuk, who is not only a principal of Calypso but is also Calypso's FCC counsel and the attorney who signed Calypso's petition for rulemaking. To ensure Calypso's receipt of the letter, it was sent by fax in addition to first class mail.

On January 4, 1993, Paradise filed "Comments and Counter-proposal" in the proceeding, urging that the FCC deny Calypso's proposal and instead allocate Channel 267B to Cruz Bay, Virgin Islands, for use by Paradise's station WDCM(FM). My firm, CES, prepared the engineering statement submitted by Paradise in support of this counterproposal.

On January 15, 1993, Calypso then made what I consider to be an outright misrepresentation in a motion seeking additional time to respond to Paradise's comments and counterproposal. To justify the requested extension of time, Calypso stated:

"Counsel [for Calypso] today discovered that Petitioner's [Calypso's] engineer [Richard Biby] has without authorization, also provided engineering services for one of the opposing parties. Therefore, it is necessary for Petitioner to retain new engineering counsel to assist Petitioner in formulating a proper response." (Emphasis added.)

This statement was submitted by Mr. Belendiuk's law firm and over his name (although signed by another attorney in the firm). The statement was clearly meant to indicate two things, neither of which was true: (1) that I and my firm had been Calypso's engineers in this proceeding; and (2) that Calypso's counsel "discovered" only on January 15, 1993 that Calypso would have to retain another engineer. As noted above, CES had never been Calypso's engineer in this proceeding, and my letter of December 3, 1992, had made that abundantly clear to Mr. Belendiuk and his Calypso partners.

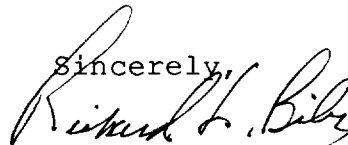
Mr. Belendiuk compounded the foregoing misrepresentations in "Reply Comments" filed by Calypso over his signature on February 8, 1993. Included in those reply comments was the following statement (in footnote 2):

"In its petition for rulemaking, Petitioner's [Calypso's] engineer, Richard L. Biby, supplied the data to support Petitioner's proposal to substitute Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands. However, Mr. Biby, without authorization, also provided engineering services for Paradise in its Comments resulting in Petitioner having to retain new engineering counsel to assist it in formulating a proper response."

Calypso cited "these actions that Paradise's engineer has taken in this proceeding" as a reason why Paradise's counterproposal "should be viewed as disingenuous." Ibid., p. 3.

In my view, the misrepresentations made over Mr. Belendiuk's name and signature in this proceeding have not only improperly impugned the character and professional reputation of my firm and myself, but constitute unacceptable and unethical conduct on the part of Mr. Belendiuk falling short of the professional standards to which attorneys are held.

Consistent with the objective of Rule 8.3 of the District of Columbia Code of Professional Conduct, I am sending a copy of this letter to the District of Columbia Bar Counsel.

Sincerely,


Richard L. Biby
Registered Professional Engineer
District of Columbia Reg. No. 5710E
Commonwealth of Virginia Reg. No. 014018

Attachments

cc: Arthur V. Belendiuk, Esq.
Linda J. Eckard, Esq.
Scott Cinnamon, Esq.
Barry D. Wood, Esq.
Michael C. Ruger
D.C. Bar Counsel

Attachment A

Before the
Federal Communications Commission
Washington, D.C. 20554

**ORIGINAL
FILE**

In the Matter of)
Amendment of Section 73.202(b))
(Table of Allotments))
FM Broadcast Stations)
Charlotte Amalie, Virgin Islands)

To: Chief, Mass Media Bureau
Policy and Rules Division
Allocations Branch

File No. BPH-870707MI
RM-_____

**RECEIVED
JUN 22 1992**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**PETITION FOR RULE MAKING**

Robert E. Miller, Jonathan Cohen and Arthur V.
Belendiuk d/b/a Calypso Communications ("Petitioner"),
permittee of a new FM station to be constructed at Charlotte
Amalie, Virgin Islands,¹ hereby respectfully petitions the
Commission to amend Section 73.202(b) of the Commission's
Rules to substitute Channel 267B for Channel 246B at
Charlotte Amalie, Virgin Islands.

The substitution will serve the public interest because
it will allow Petitioner to promptly construct the facility.
Currently, Channel 247 is being used in Tortola, British
Virgin Islands, only twenty miles from Charlotte Amalie.
The use of Channel 246B would create harmful electrical
interference. Calypso's engineer has completed a channel
study, Exhibit 1, that is attached hereto and has found
that Channel 267B would be an acceptable replacement for

¹ Petitioner's application (File No. BPH-870707MI) was
granted June 23, 1991. (Public Notice, Report No. 21150,
released July 1, 1991).

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List A B C D E

Channel 246B.

Petitioner also requests that its permit be modified pursuant to Section 316(a) of the Communications Act of 1934, as amended, to specify operation on Channel 267B in lieu of channel 246B.

The Petitioner specifically represents that in the event Channel 267B is allotted to Charlotte Amalie it will promptly construct thereon the new facilities.

Therefore, Petitioner respectfully requests that its petition be adopted and that the Commission issue a "Notice of Proposed Rule Making" amending Section 73.202(b) of the Rules as follows:

U.S. Virgin Islands

	<u>Present</u>	<u>Proposed</u>
Charlotte Amalie	246B	267B

The Petitioner also requests the Commission to include in the "Notice of Proposed Rule Making" a provision for the modification of Petitioner's permit to operate the new station on Channel 267B.

Respectfully submitted,
CALYPSO COMMUNICATIONS

By: 

Arthur V. Belendiuk
Its Attorney

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
202-785-2800

June 22, 1992

Attachment A

EXHIBIT ONE

'92 06/01 10156

Z 703 534 7884 Conn. Eng. Serv.

Attachment A

Communications Engineering Services, P.C.
Falls Church, VAPage 0
Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
 Channels: 200 to 300
 Translators/Boosters Not Included
 Reference City: Charlotte Amalie, VI
 Audit File: wit06012.A01

Latitude: 18-20-30
 Longitude: 64-43-59
 FCC Database: 920429

Call Auth Owner	City of License, St FCC File No. Channel Class	H-AMSL V-AMSL Docket No.	H-AAT V-AAT Last Update	H-KW V-KW Date	Latitude Longitude	Br-to -from	Dist (km)
WIUJ	St. Thomas, VI	442		.010	18-21-23 64-56-43	274.2 94.1	22.5
LIC	205 D				05/23/91		
Vi. Council Inc., of the Boy Scouts							
*To channel 275D							

Tortola	215 B	475	50.0	18-25-32 64-38-45	44.6 224.6	13.1
11/04/91						

Accepted by Commission 910523

NEW	British Virgin Islands	600	100.	18-25-00	46.4	12.1
	219 C	600	100.	64-39-00	226.4	
03/30/88						

BRITISH VIRGIN ISLANDS

USED	Cruz Bay, VI	222	B		18-20-35 64-44-14	289.4 109.3	0.5
				86-259	04/22/88		

SITE RESTRICTED - EFFECTIVE 870528

WDCM	Cruz Bay, VI	434	397	48.	18-20-17	125.8	0.7
CP MOD	BMPH-901214IH	222	B	434	397	48.	64-43-40
					02/14/92	305.8	
Paradise Broadcasting Corporation							

WDCM	Cruz Bay, VI				18-20-59	321.9	1.1
DEL	222	B			64-44-23	141.9	
					01/12/90		
Commission							

WDCM	Cruz Bay, VI				18-20-59	321.9	1.1
ADD	224	B			64-44-23	141.9	
					01/12/90		
Commission							

NEW	British Virgin Islands	600	100.	18-25-00	46.4	12.1
	232 C	600	100.	64-39-00	226.4	
03/30/88						

BRITISH VIRGIN ISLANDS

ADD	Cruz Bay-St. John, VI	234	A		18-20-56 64-46-43	279.5 99.5	4.9
					03/11/87		
Rosalia Villafane							
SITE RESTRICTED 2.4KM NORTHEAST							

'92 06/01 10:57

E 703 534 7884 COMM. ENG. SERV.

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Attachment A

Communications Engineering Services, P.C.
Falls Church, VAPage 1
Jun 1, 1992

FM Facilities within 50 km

Title: Charge Bob Miller, USVI
 Channels: 200 to 300
 Translators/Boosters Not Included
 Reference City: Charlotte Amalie, VI
 Audit File: wit06012.A01

Latitude: 18-20-30
 Longitude: 64-43-59
 FCC Database: 920429

Call Auth Owner	City of License, St FCC File No.	Channel Class	H-AMSL V-AMSL	H-AAT V-AAT	H-KW V-KW	Latitude Longitude	Br-to -from	Dist (km)
USED	Charlotte Amalie, VI 241	B1	86-290			18-20-36 64-55-48	270.5 90.5	20.8
EFFECTIVE 870518								
WIVI CP Tim Gordon English	Charlotte Amalie, VI BPH-9116JL 241	B1	482 482	457 457	2.40 2.40	18-21-33 64-58-18	274.5 94.4	25.3
						02/06/92		
WVNX CP Calypso Communications	Charlotte Amalie, VI BPH-870707MI 246	B	427 427	391 391	50. 50.	18-20-30 64-43-59	0.0 0.0	0.0
						08/16/91		
USED	Charlotte Amalie, VI 246	B	86-290			18-20-00 64-50-00	265.0 85.0	10.6
SITE RESTRICTED - EFFECTIVE 870518								
DEL Commission	Charlotte Amalie, VI 246	B				18-20-00 64-50-00	265.0 85.0	10.6
						01/12/90		
NEW	British Virgin Islands 247	C		600 600	100. 100.	18-25-00 64-39-00	46.4 226.4	12.1
						03/30/88		
BRITISH VIRGIN ISLANDS								
USED	Charlotte Amalie, VI 250	B				18-21-25 64-58-00	274.0 93.9	24.7
						12/01/90		
Coordinates updated from LIC record			BLH800911AH					
WGODFM LIC Three Angels Corporation	Charlotte Amalie, VI BLH-800911AH 250	B	504 504	475 475	50. 50.	18-21-25 64-58-00	274.0 93.9	24.7
						11/02/89		
WIYC LIC Palm Beach Group Broadcasting Co.	Charlotte Amalie, VI BLH-7193 266	B	533	457	50.	18-21-34 64-58-22	274.5 94.4	25.4
						09/30/88		

'92 06/01 10:58

X 703 534 7884 Comm. Eng. Serv.

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Attachment A

Communications Engineering Services, P.C.
Falls Church, VA

Page 2
Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
Channels: 200 to 300
Translators/Boosters Not Included
Reference City: Charlotte Amalie, VI
Audit File: wit06012.A01

Latitude: 18-20-30
Longitude: 64-43-59
FCC Database: 920429

Call Auth Owner	City of License, St FCC File No. Channel Class	H-AMSL V-AMSL Docket No.	H-AAT V-AAT Last Update Date	H-kW V-kW Last Update Date	Latitude Longitude	Br-to -from	Dist (km)
ADD Commission	Charlotte Amalie, VI 267 B				18-20-00 64-50-00 01/12/90	265.0 85.0	10.6
USED	Charlotte Amalie, VI 271 B	82-764			18-20-36 64-55-48 04/21/87	270.5 90.5	20.8
EFFECTIVE 7-5-83							
WTBN CP MOD BMPH-880224IA Trans Caribbean Broadcasting Company	Charlotte Amalie, VI 271 B	490 490	466 466	50. 50.	18-21-23 64-56-43 11/06/91	274.2 94.1	22.5
WTBN CP Trans Caribbean Broadcasting Company	Charlotte Amalie, VI BPH-911125ID 271 B	530 530	509 509	33.0 33.0	18-21-33 64-58-18 02/07/92	274.5 94.4	25.3
WIUJ CP Vi. Council Inc., of the Boy Scouts From channel 205D-Commercial Channel Operating Educational	St. Thomas, VI BPED-910506MI 275 D	467	451	.017	18-21-23 64-56-43 03/19/92	274.2 94.1	22.5
WIYC LIC Palm Beach Group Broadcasting Co.	Charlotte Amalie, VI BLH-880617KD 282 B	522 522	490 490	45. 45.	18-21-31 64-58-21 04/06/92	274.3 94.2	25.4
USED	Charlotte Amalie, VI 282 B	85-209			18-21-34 64-58-22 03/01/89	274.5 94.4	25.4
COORDINATES ARE FOR WCWI PER D85-209							
WVGN APP Sandy Isle Broadcasting, Inc.	Charlotte Amalie, VI BMPH-910523IP 287 B	533 533	512 512	10.0 10.0	18-21-33 64-58-18 11/13/91	274.5 94.4	25.3
USED	Charlotte Amalie, VI 287 B	86-290			18-21-33 64-58-18 10/15/90	274.5 94.4	25.3
RESERVED FOR WVGN PER D86-290							

'92 06/01 10:59

2 703 534 7884 Comm. Eng. Serv.

Communications Engineering Services, P.C.
Falls Church, VA

Page 3
Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
Channels: 200 to 300
Translators/Boosters Not Included
Reference City: Charlotte Amalie, VI
Audit File: wlt06012.A01

Latitude: 18-20-30
Longitude: 64-43-59
FCC Database: 920429

Call	City of License, St	H-AMSL	H-AAT	H-kW	Latitude	Br-to	Dist
Auth	FCC File No.	Channel	Class	V-AMSL	V-AAT	V-kW	Longitude
Owner				Docket No.	Last Update		Date
WVGN	Charlotte Amalie, VI			533	512	32.	18-21-33
CP	BPH-901113ID	287	B	533	512	32.	64-58-18
Sandy Isle Broadcasting, Inc.							11/01/91
WVGN	Charlotte Amalie, VI			494	467	1.35	18-21-33
LIC	BLH-850331KF	296	A	494	467	1.35	64-58-18
Sandy Isle Broadcasting, Inc.							09/05/90
*TO Channel 287B per D86-290							

--> End of Facilities <--

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December 3, 1992

Arthur V. Belendiuk, Esq.
Jonathan Cohen, and
Robert E. Miller d/b/a
Calypso Communications
c/o Smithwick & Belendiuk, P.C.
1990 M St. N.W. Suite 510
Washington, D.C. 20036

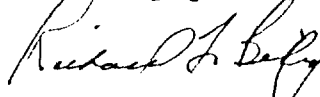
Dear Bob & Art:

It has come to our attention that you may consider us to be your consulting engineer in the petition for rulemaking which you submitted for Channel 267B at Charlotte Amalie, USVI. To our recollection, there was never any discussion in which you related any intent to retain us for such an effort.

Further, it has come to our attention that the material you submitted to the Commission, purportedly an engineering showing by your consulting engineer that Ch. 267B meets all pertinent spacing requirements for your proposed reference point, is incorrectly described. At best, your Exhibit One in the Petition appears to be a list of facilities within 50 kilometers of Calypso's Construction Permit, furnished by my office.

In light of our past professional relationships in projects other than Calypso Communications, Arthur, we regret that you did not see fit to notify us of your intentions. Please be advised that we have determined that we could not consider representing you in this matter because of a conflict of interest. By this letter, we respectfully call your attention to the fact that we have not represented, do not represent, and can not represent Calypso Communications in this rulemaking proceeding (RM-8027). We further request that you notify the Commission of these facts.

Sincerely yours,



Richard L. Biby, P.E.